

GUIDELINES FOR ENFORCEMENT OF THE VIRGINIA WEIGHTS AND MEASURES LAW - CIVIL PENALTY ASSESSMENT DECISION MATRIX

STATEMENT OF BASIS - STATUTORY AUTHORITY -- Chapter 56, Title 3.2, Section 3.2-5646(B) OF THE CODE OF VIRGINIA (1950), AS AMENDED

STATEMENT OF PURPOSE -- This guideline provides direction to the Agency personnel in determining the amount of the penalty that shall be considered to be appropriate for various violations. It is designed to insure, to the extent practicable, that similar violations will be assessed generally comparable penalties in as uniform a manner as possible.

1.1 Definitions.

The following words and terms, when used in these guidelines, shall have the following meanings, unless the context clearly indicates otherwise:

"Board" means the Board of Agriculture and Consumer Services.

"Law" means the Virginia Weights and Measures Law, Chapter 56 of Title 3.2 (3.2-5600 through 3.2.5648) of the Code of Virginia (1950), as amended.

"Previous violation" means any violation of the Virginia Weights and Measures Law, or regulations adopted pursuant thereto, cited within the three-year period preceding the current violation.

1.2 Provision for Civil Penalties Generally.

Any person violating a provision of this chapter or regulations adopted hereunder may be assessed a civil penalty by the Board in an amount not to exceed \$1,000.

1.3 Assessment of separate violations.

- A. Each violation of the Law shall be assessed separately for the purpose of determining the total civil penalty assessment.
- B. In cases of continued violation, a civil penalty may be assessed separately for each day of violation beginning with the day of notification of the violation and ending with the date of abatement.

1.4 Penalty Point System.

The point system described in this section shall be used to determine the amount of the civil penalty.

A. Type of Violation

A person or firm in violation of the Law, or regulations adopted pursuant thereto, shall be assigned up to 10 points for the type of violation described in one of the following categories:

Points	Type of Violation
1 - 5	Failure to notify Agency personnel of the installation of any weighing or measuring equipment prior to its introduction into commercial use.
1 - 5	Failure of any livestock market operator to comply with the provisions contained in 3.2-5636, 3.2-5637 and 3.2-5639.
2 - 4	Failure to stamp upon or affix to a consumer item or post at or adjacent to the display, the selling price of the item.
2 - 6	Failure to meet all requirements regarding labeling of commodities in package form.
2 - 6	Sell, or offer or expose for sale, any commodity in a manner contrary to established methods of sale.
2 - 6	Advertise any commodity, thing, or service in a manner contrary to law.
2 - 6	Display a commodity in package form in a manner that misleads the buyer or prospective buyer as to the quantity of its contents.
3 - 7	Failure to make necessary repairs to rejected equipment in specified period of time of time
3 - 7	Failure to identify petroleum storage tanks, by product, as prescribed by law or regulation.
4 - 8	Position a weighing or measuring device in a manner that obstructs the observation of the indicating elements or the operation of the device.
4 - 8	Operate a weighing or measuring device in a manner contrary to its intended operating design.
4 - 8	Failure to maintain weighing and measuring equipment in proper operating condition.
4 - 8	Use or operate any weighing or measuring device beyond its nominal rated capacity.
4 - 8	Failure to notify Agency personnel of modification to weighing and measuring devices, when such modification has a direct effect on the performance of the equipment.
5 - 10	Sell, or offer or expose for sale, less than the quantity represented for any commodity, thing, or service
5 - 10	Dispose of any rejected or condemned weight or measure in a manner contrary to law or regulation.
5 - 10	Take more than the quantity represented of any commodity, thing, or service when, as buyer, furnishes the weight or measure by means of which the amount of the commodity, thing, or service is determined.

- 5 - 10 Failure to weigh vehicles or coupled vehicle combinations as single-drafts.
- 5 - 10 Failure to give any advertised discounts.
- 6 - 10 Failure of any livestock operator to weigh animals on the day of sale as required by law.
- 6 - 10 Failure to maintain proper security seals on the adjusting mechanism designed to be sealed.
- 6 - 10 Failure of the equipment operator to return indications to a zero setting prior to its next operation. (Exemption given to self-service operations)
- 6 - 10 Failure to retain records as required by law or regulation.
- 8 - 10 Remove from any weight or measure, contrary to law or regulation, any tag, seal, or mark placed thereon by the appropriate authority.
- 10 Violate a stop sale, use, or removal order.
- 10 Interfere with the Commissioner or his duly authorized agents in the performance of duties.
- 10 Impersonate any federal, state, county or city weights and measures inspector or official.
- 10 Use or have in possession for the purpose of using any weighing or measuring device or instrument used to or calculated to falsify any weight or measure.
- 10 Operate mobile equipment (i.e., vehicle tank meters and LPG meters) on the public streets with a ticket inserted in the printing device of the meter.

B. Seriousness of Violation

A person or firm in violation of the Law, or regulations adopted pursuant thereto, shall be assigned up to 10 points for the seriousness of the violation, taking into consideration any one of the following factors:

- (a) Potential monetary consequences.
- (b) Potential of impact to competitors
- (c) Degree of inconvenience or deception to a buyer or prospective buyer.
- (d) Degree of disregard for the law.

Points	Seriousness Category
1 - 3	Minor violations; those having minimal impact on the consumer or competitors
4 - 6	Moderate violations; those having a measurable impact on the consumer or competitors
7 - 10	Serious violation; those having an adverse impact on the consumer or competitors

C. Culpability

A person or firm in violation of the Law, or regulations adopted pursuant thereto, shall be assigned up to 6 points, from one of the following categories, based on the degree of fault of the person to whom the violation is attributed:

Points	Culpability Category
0	No fault attributed; an inadvertent violation which was unavoidable by the exercise of reasonable care
1 - 2	Lack of knowledge; a violation which is the result of the individual being unaware of the statutory requirements
3 - 4	Negligent
5 - 6	Knowing, aware of actions

D. History of Previous Violations

In determining the amount of a civil penalty, the history of previous violations of the business or natural person shall be considered.

For current violations resulting from actions of a business, one point shall be assigned for each previous violation found that resulted from the actions of the business. Each physical business location shall be treated as a separate entity.

For current violations resulting from the actions of a natural person, one point shall be assigned for each previous violation found that is attributable to the same natural person cited in the current violation.

Previous violations overturned through the appeal process shall not be counted.

In instances where both the business and a natural person have been cited in the current case, and both have previous violations, points may be assigned for both.

E. Credit for good faith in attempting to achieve compliance.

The demonstrated good faith of the person or firm in attempting to achieve rapid compliance after notification of the violation shall be taken into consideration in determining penalty points. Up to four points shall be deducted from the total points assigned under Subsection A, B, C, and D, based on the following categories:

Points	Good Faith Credit Category
3 - 4	Immediate action taken to abate the violation, and correct any conditions resulting from the violation, in the shortest possible amount of time.
1 - 2	Prompt and diligent efforts made to abate the violation, and correct any conditions resulting from the violation, within a reasonable period of time.
0	No points deducted.

F. Determination of base civil penalty.

The total penalty point amount shall be determined by adding the points assigned under Subsections A, B, C, and D, and subtracting from that subtotal the points assigned under Subsection E of this Section. The resulting total penalty point amount is converted to a dollar amount, according to the following schedule:

Points	Dollars	Points	Dollars
1	\$ 10	11	\$ 150
2	\$ 20	12	\$ 200
3	\$ 30	13	\$ 250
4	\$ 40	14	\$ 300
5	\$ 50	15	\$ 400
6	\$ 60	16	\$ 500
7	\$ 70	17	\$ 625
8	\$ 80	18	\$ 750
9	\$ 90	19	\$ 875
10	\$100	20	\$1,000

G. Consideration of previous violations; reduction of penalty.

All previous violations of a person or firm shall be taken into consideration in determining the base civil penalty. In the case of a less than serious violation where no previous violation exists, the base civil penalty may be reduced by 20 percent. In the case of a serious violation or a repeat violation the base civil penalty shall not be reduced.

1.5 Waiver of Use of Formula to Determine Civil Penalty.

- A. The Virginia Board of Agriculture and Consumer Services may waive the use of the formula contained in Section 1.4 to set the civil penalty, if the Board determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. The basis for every waiver shall be fully explained and documented in the records of the case.

- B. If the Board waives the use of the formula, it shall give a full written explanation of the basis for any penalty assessment to the person or firm found in violation.